



**COUNTY OF DUTCHESS**  
BOARD OF HEALTH

**DUTCHESS COUNTY BOARD OF HEALTH**

**Minutes**

**Thursday, October 20, 2022**

The regular monthly meeting of the Dutchess County Board of Health was held virtually on Microsoft Teams and at the Dutchess County Department of Behavioral & Community Health (DBCH), 85 Civic Center Plaza – Suite 106, Poughkeepsie, NY 12601 on the above date.

**PRESENT:** Alexander Cohen, MD  
John Fallon, NP  
Laura Fil, DO  
Doug McHoul, Legislative Rep.  
Maria Muller, RN  
Marc Nelson, MPA, Secretary  
Melissa Nelson-Perron, MD

**ABSENT:** Lobsang T. Lhungay, MD, President  
David McNary, Vice President

**VISITORS:** Marie-Pierre Brule, PE, DC DBCH Director of Environmental Health Services  
Monique Jones Kusmuk, DC DBCH Associate Public Health Sanitarian  
Anthony Ruggiero, MPA, DC DBCH Assistant Commissioner of Administration  
Livia Santiago-Rosado, MD FACEP, DC DBCH Commissioner  
Karl Schlegel, MPA, DC DBCH Director of Fiscal Services

**CALL TO ORDER** – Mr. Nelson called the meeting to order at 4:00 p.m.

**DECLARATION OF A QUORUM** – A quorum was called.

**MINUTES** – The minutes of the September 15, 2022, meeting were reviewed. Dr. Cohen made a motion to approve the September minutes, Dr. Fil seconded, and the minutes were approved unanimously.

**SECRETARY'S UPDATE** – No correspondence

**COMMISSIONER'S REPORT** – No report

## COMMITTEE REPORTS

**HEALTH DISPARITIES** – Dr. Fil and Dr. Nelson-Perron stated that next Wednesday at 3 pm is the first official meeting which will be held virtually. Look to discuss the previous topics covered from the last time the group met and to discuss the Community Need Assessment and hopefully get them on board with working on the topic of dental care. There was an oral health summit and hoping to get someone to attend. Dental care was a health disparity found by the most current needs assessment. Food insecurity was also a topic that could be addressed. Would like to get an email address for the group like [DCHHealthDisparitiesCommittee@dutchessny.gov](mailto:DCHHealthDisparitiesCommittee@dutchessny.gov). When we reached out regarding setting the meeting, 15 members expressed interest in continuing so hopefully we can get a mix of old and new members.

**LEGISLATIVE REPORT** – Mr. McHoul stated there were no major health updates at the most recent meeting of the Legislature. They are continuing to work on the new YOU Union which is costing Dutchess County \$25 million dollars, the total project is \$40 million. Mr. McHoul wanted to point out that the county has done a lot towards mental health services including the YOU, the homeless shelter on Oakley Street, St. Joe's treatment facility and the Stabilization Center. We should be proud of all the additions we are providing to the community. Mr. Fallon asked about St. Joe's treatment facility which was explained to have started prior to the pandemic, was put on hold during the pandemic and is now moving forward again. It is a residential facility for substance use disorder located at the site of the Catherine Street Community Center. Not sure of the number of beds but they are adult beds, not pediatric. Mr. Nelson pointed out that there will be an event at the site of the YOU Union project in Eastman Park this weekend called The YOU goes boo! which will have a Halloween theme. Mr. Ruggiero mentioned that we are also in the process of finishing up the acquiring 89 Main Street for the Empowerment Center and that may be coming before the Legislature soon.

**SANITARY CODE** – Monique Jones Kusmuk, Associate Public Health Sanitarian, gave an overview of the tobacco regulations that the Department is responsible for enforcing. Dutchess County Department of Behavioral & Community Health is responsible for enforcing the New York State Public Health Law (NYSPHL) Article 13F, also known as the Adolescent Tobacco Use Prevention Act (ATUPA). This law established the age requirement for purchasing tobacco products, electronic & herbal cigarettes, smoking paraphernalia, shisha, and liquid nicotine with the goal of preventing teen smoking and ultimately smoking in adulthood. As of November 2019, the purchasing age went from 18 to 21 years of age. This law also addresses the sale of flavored nicotine products including vapor products, and establishes penalties for violations of the law. DBCH also enforces Article 25 of the Dutchess County Sanitary Code which primarily establishes a local permit requirement for Dutchess County tobacco and electronic cigarette vendors. This local permit is in addition to the NYS licenses that tobacco vendors and vapor products dealers must obtain from the NYS Dept. of Taxation and Finance. There is also a school reporting component to Article 25 that requires schools with students in 6<sup>th</sup> grade and up submit reports to the department documenting incidents where students are found smoking, vaping, or possessing age-restricted tobacco related and/or electronic cigarette products on

school grounds. DBCH also enforces the NYS Clean Indoor Air Act, officially known as NYS Public Health Law Article 13E, as well as Dutchess County Local Law no. 5 of 2002, which is our locally passed Clean Indoor Air law. These regulations address smoking in indoor and some outdoor areas. Ms. Jones Kusmuk also mentioned that NYS has tasked the NYS Office of Cannabis Management to be responsible for licensing and regulation of the sale of cannabis products so they are not addressed in the proposed changes to Article 25.

The goals of the proposed amendments were to fill any gaps in the regulation, remove any language that may be duplicative of other laws or regulations, and to align with recent amendments to the Public Health Law. The last time Article 25 was amended was 2009. Definitions that are defined in other associated regulations (NYSPHL Articles 13E & 13F) were removed. The list of products was expanded to require a local tobacco license to align with those products that are currently age-restricted under NYSPHL Article 13F, including shisha, smoking paraphernalia, and vapor products. It was important to add vapor products to our local permit requirement since their omission was an existing gap. There have been significant changes in the market regarding electronic cigarettes and vaping products since the code was last amended which prompted us to update our regulations to reflect these changes. One of the problems involved suspending a county permit when there was an unlawful sale at a retail location. Currently, when a vendor's local license to sell is suspended due to an underage sale, the operator could still sell other products because the permit does not cover them. It is also worth noting that we chose to maintain our local license to enhance our monitoring and enforcement processes. The sale of certain products like smoking paraphernalia or empty e-cigarette devices do not require a license from the NYS Dept. of Taxation and Finance but they are age restricted. By requiring the local license, the department will know where these businesses are in the county and can perform underage checks to determine compliance.

The amendments clarified that permits are not transmissible from one operator to another. It also shortened the amount of time, from 21 days to 14 days, that a new vendor must apply for their county permit before beginning operation. The requirement to comply with workers compensation law was also added. This addition just added language to formalize policy already in place. It also reiterates compliance with Article 4 of the Dutchess County Sanitary Code which requires operators to allow department representatives to enter their facility and areas of the facilities when executing their official duties. There have been issues with retailers not allowing department staff access to certain areas of their stores since the flavored vapor product ban went into effect in May of 2020. The final change was an update to the school reporting section to include a provision for schools to report where students obtained or purchased any age-restricted products that they are found with. This will assist with our underage compliance check program, serving as an aid for conducting checks at identified locations to determine compliance with NYSPHL Article 13F.

Dr. Cohen questioned if we should add a statement that the Office of Cannabis Management is the regulator for all cannabis product? Ms. Jones Kusmuk stated that they had gone back and forth about adding a statement and finally decided to leave it out.

## **OLD BUSINESS**

**BOARD OF HEALTH MISSION STATEMENT** – It was suggested that maybe the Board of Health should adopt the Department of Behavioral & Community Health's mission statement. The item was tabled and will be added to the agenda for the November meeting.

## **NEW BUSINESS**

**PUBLIC WATER SUPPLY PERMIT** - Mr. Schlegal, Director of Fiscal Services, submitted a proposal to increase the Public Water Supply (PWS) Permit Fees. This fee has not been changed since its inception in 2014. The permit fee is set to cover the costs associated with monitoring and oversight of the PWS program. Mr. Schlegal explained that they are looking to modernize the permit system and would like to increase the fee and cover all the lab costs associated with non-community PWS samples collected as part of programmatic monitoring and sampling. Currently, the existing fee covers only a portion of those lab costs, while others are billed back to the permit holder. There are about 650 non-community PWS in Dutchess County that are monitored quarterly. To be a public water system it requires 5 service connections or services 25 or more people for at least 60 days. Mr. Fallon made a motion to approve the Public Water Supply Permit Increase from \$120 to \$150 as of 1/1/23 and to \$180 as of 1/1/24, Mr. McHoul seconded the motion, motion carried unanimously.

**NYS PROPOSED CHANGES TO MCLs FOR PFAS** – Marie-Pierre Brule, Director of Environmental Health Services, gave an update on drinking water regulations. All drinking water regulations are promulgated by New York State and these regulations are at least as stringent as the EPA drinking water regulations. The NYS regulations require that public water systems monitor their water for a variety of contaminants, including microbiological, inorganic, organic, and radiological. Some of these contaminants are naturally occurring and some are man-made. The drinking water standards include maximum levels of contaminants that are regulated. If those maximum levels are exceeded, it triggers actions by the public water system including additional testing, notification of the public and mitigation.

Every 5 years the EPA generates a list of 30 unregulated contaminants which are suspected to be found in drinking water and which are suspected of having negative health effects on the human body. These unregulated contaminants are then tested in various public water systems and the findings are used by the EPA to make regulatory decisions for unregulated contaminants. This program is called the EPA Unregulated Contaminant Rule. In the early 2000s a study found PFOA (perfluorooctanoic acid) and PFOS (perfluorooctane sulfonic acid) was widely detected in human blood raising concerns over potential adverse effects on human health. PFOS and PFOA are part of a group of chemicals that were used to make fluoropolymer coatings and products that resisted heat, oil, stains, grease and water. This family of chemicals has been used widely for decades in fabric waterproofing, certain fire suppression foams, and non-stick cookware. These chemicals break down slowly in the environment. Testing occurred between 2001 and 2003 and MTBE was widely detected in drinking water and subsequently became a regulated contaminant. Testing occurred in 2013 and 2015 for PFOS, PFOA and 1,4

Dioxane and PFOA/PFOS contamination was detected in the Village of Hoosick Falls in excess of the EPA health advisory level. It was also found in the City of Newburgh at levels below the EPA health advisory level.

In 2016 NYS created the Water Quality Rapid Response Team to assist in addressing these water quality issues and the Drinking Water Quality Council to provide recommendations to NYS Department of Health (NYSDOH) on emerging contaminants. Between 2016 and 2020 NYSDOH set lower maximum levels for PFOA, PFOS, and 1,4 Dioxane. The EPA has not set a maximum contaminate level. In 2021, NYS passed a law allowing NYS to monitor for emerging contaminants.

In Dutchess County we have approximately 650 public water systems. Out of those were required to test their water for PFOA and PFOS, 30% found PFOA and/or PFOS and 5% of those had levels above the maximum contaminants level (MCL). NYS is now proposing to amend their drinking water regulations to include a MCL of 10 ppt for 4 additional contaminants of the same PFAS family and a MCL of 30 ppt for 6 additional contaminants of the same PFAS family. The public comment period ends December 5, 2022. In June 2022, the EPA Health Advisory for PFOA and PFOS was dropped to near zero and new health advisories were set for other chemicals based on animal toxicity studies. Per EPA, human studies have found associations between PFOA and/or PFOS exposure and effects on the immune system, the cardiovascular system, human development (decreased birth weight), cancer, and the suppression of vaccine response in children. There is technology available to remove PFAS from drinking water which include activated carbon filters and reverse osmosis membranes. The cost to a homeowner for reverse osmosis is between \$300-\$500. It was asked if climate change has any impact on Public Water Supplies. Source availability would be the most obvious, if we are in a drought wells or water supplies could dry up. Public water supplies are required to regularly check water capacity and are encourage to have back-up power. Increase in storms which could cause power issues and damage to external tank systems could also be a problem. The northward movement of the salt front in the Hudson River is also something to think about. The water systems who use water from the Hudson (City of Poughkeepsie, Rhinebeck, Hyde Park) do not have desalination equipment. If a water system reaches a certain level of sodium the supplier is required to issue a notification.

**ADDITION TO THE AGENDA:** Dr. Fil made a motion to add the Adoption of the Amendments to Article 25 of the Dutchess County Sanitary Code to the agenda for this meeting. Mr. McHoul seconded the motion and the motion passed unanimously.

**ADOPTION OF AMENDMENTS TO ARTICLE 25 OF THE DUTCHESS COUNTY SANITARY CODE:** Dr. Nelson-Perron made a motion to approve the proposed amendments to Article 25 of the Dutchess County Sanitary Code as presented. Dr. Cohen seconded the motion. Roll call for vote:

Dr. Cohen – Yay  
Mr. Fallon – Yay  
Dr. Fil – Yay  
Mr. McHoul – Yay

Ms. Muller – Yay  
Mr. Nelson – Yay  
Dr. Nelson-Perron – Yay  
Dr. Lhungay – Absent  
Mr. McNary – Absent.  
Motion passed.

**MOTION TO ADJOURN:** Dr. Fil made a motion to adjourn the meeting, Mr. McHoul seconded, all were in favor and the meeting adjourned at 4:47 p.m.

**NEXT SCHEDULED MEETING: Thursday, November 17, 2022, at 4 pm**

**2022 EXECUTIVE POSITIONS FOR THE BOARD OF HEALTH**

Dr. Lobsang T. Lhungay – President  
David McNary – Vice President  
Marc Nelson – Secretary

Minutes signed by:



Marc Nelson  
Secretary of the Board of Health



Wendy Cady  
Recording Secretary



**COUNTY OF DUTCHESS**  
DEPARTMENT OF BEHAVIORAL & COMMUNITY HEALTH  
Administration

## MEMORANDUM

To: Board of Health  
FROM: Karl G. Schlegel, MPA, Director of Fiscal Services  
DATE: 17 October 2022  
SUBJECT: Public Water Supply Permit Fees

Department Administration is currently working on modernizing our public water supply system, and as part of that effort have recently reviewed a cost increase for Public Water Supply (PWS) Permit Fees. Accordingly, we are submitting for your review and approval an increase in the annual fee assessed for a Public Water Supply Permit issued in accordance with Section 5.7 of the Sanitary Code.

A permit fee was established by the Board in 2013, effective in 2014, to cover the surveillance costs associated with monitoring and oversight of the PWS program; the permit fee has remained unchanged since that time. With this increase the department is also proposing to cover all lab costs associated with non-community PWS samples collected as part of programmatic monitoring and sampling; currently only a portion of those costs are covered, while others are billed back to the permit holder.

The chart below highlights the proposed increases.

Vaccine Name	Current Fee	2023 Proposal	2024 Proposal
Annual Public Water Supply Permit Fee	\$120	\$150	\$180

Submitted by:

  
Karl G. Schlegel, MPA  
Director of Fiscal Services

2022-10-18

Date

Approved by the Dutchess County Board of Health at the meeting held on Oct. 20, 2022

Approved by:

  
Marc Nelson  
Recording Secretary, DC Board of Health

Oct. 20, 2022  
Date



## Public Water Systems and NYS Drinking Water Standards for PFAS and Other Emerging Contaminants

Per- and polyfluoroalkyl substances (PFAS) are contaminants used in many products and have been linked to health issues. New York State has been developing drinking water standards, also called maximum contaminant levels (MCLs) to address these contaminants, starting with the two most common PFAS: perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). Public drinking water with PFOA or PFOS above the MCLs must be treated to reduce the levels below the MCL.

New York's drinking water standards for emerging contaminants are among the most protective in the country. In 2020, NYS set maximum contaminant levels (MCLs) of 10 parts per trillion (10 ppt) each for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), and 1 part per billion (1 ppb) for 1,4-dioxane. New York was the first state to develop an MCL for 1,4-dioxane. New York is working to pass even more drinking water standards and notification levels for up to 23 PFAS.

New York State DOH continues to review the evolving science around health risks associated with drinking water contaminants, closely follow efforts by the U.S. Environmental Protection Agency and other states, and will update or develop additional drinking water standards as needed to protect public health.

### About Drinking Water Standards

- Drinking water standards set maximum contaminant levels (MCLs), that are the highest level of a contaminant allowed in drinking water delivered by public water systems. MCLs are enforceable regulatory limits.
- All MCLs require public water systems to regularly monitor for contaminants, notify health departments and the public of confirmed exceedances, and work with health departments on a timetable and plan to bring water systems into compliance.
- MCLs are set at levels that are protective, which means that the risk for health effects if someone drinks water at or below the MCL is minimal. In most cases, an exceedance of an MCL also does not mean that water is unsafe for use while the public water system takes actions to reduce the levels.
- MCLs are also set to consider the availability of drinking water treatment technologies, the ability to accurately measure the contaminant, and the cost associated with reducing the contaminant levels below the MCL.





- MCLs are different than health advisory levels (HALs). HALs, such as EPA's Interim Health Advisories for PFOA and PFOS, are public health goals that are not enforceable. They do not consider feasibility or the ability for water systems to measure the contaminants at low levels.

## Public Water System Requirements

- Public water systems in New York must monitor for more than 100 different contaminants on a regular schedule, including PFOA, PFOS and 1,4-dioxane.
- Public water systems must report on all PFAS included in the analytical method when they detect any level of PFOA and PFOS. This helps identify additional unregulated PFAS contaminants that may be present.
- New York's largest and some smaller public water supplies must also monitor for a select list of emerging drinking water contaminants every five years under the US Environmental Protection Agency's Unregulated Contaminant Monitoring Rule.
- As with all MCLs, water systems must notify their local health department of any exceedances. If there is a confirmed MCL exceedance, the public water system will work with their local health department to notify the public and develop a course of action and timetable to reduce levels below the MCL.
- Some water systems will need to make significant infrastructure upgrades to their water treatment processes and these projects could take several years to complete. Unless there is an unusual exposure that represents an immediate health risk, the water remains acceptable for use while the water system takes actions to reduce levels below the MCL.

## More Information

- **PFOA, PFOS and 1,4-dioxane in the environment** [www.dec.ny.gov/chemical/108831.html](http://www.dec.ny.gov/chemical/108831.html) and **PFAS ban in food packaging** [www.dec.ny.gov/chemical/124367.html](http://www.dec.ny.gov/chemical/124367.html)
- Questions about **contaminants in your public drinking water**, contact your local water supplier. Find their information on your water bill or look them up at [www.water.ny.gov](http://www.water.ny.gov)
- Advice about your drinking water, **contact your local health department** (find their information at [www.health.ny.gov/environmentalcontacts](http://www.health.ny.gov/environmentalcontacts)) or email [bpwsp@health.ny.gov](mailto:bpwsp@health.ny.gov)
- **Questions about health risks** associated with drinking water, email [btasa@health.ny.gov](mailto:btasa@health.ny.gov).
- New York State DOH projects about PFAS exposures and health [www.health.ny.gov/chemicalsandhealth](http://www.health.ny.gov/chemicalsandhealth)

# Dutchess County Sanitary Code

## Article 25

### **REGULATION OF TOBACCO, HERBAL AND ELECTRONIC CIGARETTES, SMOKING PARAPHERNALIA, AND VAPOR PRODUCTS**

#### **Section 25.1 Statement & Scope** **Legislative findings.**

The Dutchess County Board of Health does hereby amend and enact the Dutchess County Sanitary Code as follows, herein:

~~WHEREAS, the prevention of adolescent tobacco product use is detailed in Article 13-F of the Public Health Law of the State of New York, known as the Adolescent Tobacco Use Prevention Act (ATUPA), which expressly prohibits the sale of tobacco products or herbal cigarettes, rolling papers or pipes to minors; and~~

~~WHEREAS, the Commissioner of Behavioral & Community Health of Dutchess County has the duty to enforce the provisions of ATUPA and the Dutchess County Board of Health encourages the Commissioner to utilize his/her time to reduce the prevalence of tobacco use and addiction as well as tobacco smoke exposure in Dutchess County; and~~

~~WHEREAS, the Dutchess County Board of Health promulgates the Sanitary Code which the Commissioner also has the duty to enforce; and~~

~~WHEREAS, the Dutchess County Board of Health desires the Commissioner to effectively and efficiently enforce ATUPA by limiting and preventing access to tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product by persons under eighteen years of age, and prohibit the sale of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product to said persons; and~~

~~WHEREAS, the number of adolescent tobacco users nationwide has recently been demonstrated statistically to be increasing in the United States as detailed in the Morbidity and Mortality Weekly Report (November 18, 1994, Vol. 43, No. SS-3) of the Centers for Disease Control and Prevention (CDC) of the U.S. Department of Health and Human Services; and~~

~~WHEREAS, based on the United States Surgeon General's 1994 Report, that most persons under the age of 18 who use tobacco products are addicted to nicotine and are~~

thus compelled, to a degree, to attempt to purchase more tobacco products, participating in an illegal act; and

WHEREAS, the U.S. Food and Drug Administration reports that electronic cigarettes, which may contain nicotine, could increase nicotine addiction and tobacco use in young people; and

WHEREAS, a local permit requirement is necessary to more systematically monitor compliance with ATUPA to ensure that dealers of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like products are thoroughly educated about their responsibilities under ATUPA and to ensure that an educational sign regarding the health risks of using tobacco products, produced by the Dutchess County Department of Behavioral & Community Health, is properly placed; and

WHEREAS, in-store monitoring measures are necessary to maximize store owner accountability and to minimize distribution of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like products to minors with or without charge; and

WHEREAS, the Dutchess County Board of Health finds and believes, after careful study and deliberation, that Dutchess County has a substantial and important interest in reducing the incidence of illegal acts relating to the sale of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like products to persons under the age of 18; and

WHEREAS, the New York State Legislature has found that “there is a substantial body of scientific research showing that breathing secondhand smoke is a significant health hazard for non-smokers,” and the Dutchess County Board of Health seeks to protect the health of all of the residents of Dutchess County, including those under 18 years of age; and

WHEREAS, a recent survey done by the Dutchess County Department of Behavioral & Community Health revealed that over 55% of local high school students have used tobacco products, of which 57% first tried tobacco products before the age of 14 and over 92% first tried tobacco products before the age of 16.

The Dutchess County Board of Health (“Board of Health”) finds and believes, after careful study and deliberation, that it has a substantial and important interest in reducing the incidence of illegal acts relating to the sale of tobacco products, herbal cigarettes, liquid nicotine, shisha, electronic cigarettes, or smoking paraphernalia, especially to persons under the age of 21. Therefore, it is in the public interest to encourage dealers of tobacco products, herbal cigarettes, electronic cigarettes, shisha, smoking paraphernalia, or vapor products to comply with the law, to discourage minors from being enticed into violating the law, and to protect the health of such minors by prohibiting the sale of tobacco, and vapor products to minors.



## Section 25.2 Definitions

- A. ~~The term “Permit Issuing Official” shall mean the Dutchess County Commissioner of Behavioral & Community Health or the appointed designee.~~  
The term “ATUPA” shall mean the New York State Adolescent Tobacco-Use Prevention Act.
- B. The term “**Dealer**” of tobacco products, herbal cigarettes, electronic cigarettes, or ~~any cigarette or cigarette-like products~~ **shisha, smoking paraphernalia, or vapor** products means the owner or operator of any establishment or facility where the sale and/or distribution of tobacco products, herbal cigarettes, electronic cigarettes, ~~or any cigarette or cigarette-like products,~~ **shisha, smoking paraphernalia, vapor products, or other products that now, and henceforth, may be incorporated in Article 13-F of the New York State Public Health Law occurs.** Such sale or distribution shall include vending machines.
- C. The term “herb” means any smokable plant product.
- D. ~~The term “Permit Issuing Official” shall mean the Dutchess County Commissioner of Behavioral & Community Health or the appointed designee.~~
- E. ~~The term~~ “possess” means to have physical possession or otherwise to exercise dominion or control over tangible property.
- F. Other definitions found in New York State Tax Law ~~Section 470 and~~ **Articles 20, New York State Tax Law Articles 28-C,** New York State Public Health Law Article 13-E and **New York State Public Health Law** Article 13-F ~~Section 1399-aa and any subsequent revisions are~~ hereby incorporated as definitions applicable to this Article of the Dutchess County Sanitary Code.
- G. ~~“Possess” means to have physical possession or otherwise to exercise dominion or control over tangible property.~~
- H. The term “cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (a) any roll of tobacco wrapped in any substance not containing tobacco, or (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this definition. The term “cigarette” includes “roll your own” (i.e., any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco

for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

- I. ~~The term "cigarette-like product" means any modified or nonconventional product that resembles a cigarette but may not contain tobacco and/or may contain lower levels of nicotine or tar. "Cigarette-like product" shall not include a smoking cessation medication expressly approved by the U.S. Food and Drug Administration which is being used as part of a smoking cessation program.~~
- J. ~~The term "electronic cigarette", also known as "e-cigarette", means any battery-powered device, which generally contains cartridges that may or may not be filled with nicotine in addition to flavoring and other chemicals, that provides inhaled doses of nicotine or other potentially harmful chemicals by delivering vaporized liquid solution to the user.~~
- K. ~~The term "herbal cigarette" means any product made primarily of an herb or combination of herbs, and intended to be smoked in any of the methods that tobacco is smoked, including but not limited to, as a cigarette, cigar or pipe filler.~~
- L. ~~The term "tobacco products" means one or more cigarettes or cigars, chewing tobacco, powdered tobacco or any other tobacco products.~~
- M. ~~"School grounds" means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.~~
- N. ~~The term "private club" means an organization with no more than an insignificant portion of its membership comprised of people under the age of eighteen years that regularly receives dues and/or payments from its members for the use of space, facilities and services.~~

## Section 25.3 Permit Required

- A. Every Dealer of tobacco products, herbal cigarettes, electronic cigarettes, ~~or any cigarette or cigarette-like~~ shisha, smoking paraphernalia, or vapor products in Dutchess County shall possess a valid Permit issued by the Permit Issuing Official for each location and/or event at which tobacco product, herbal cigarette, electronic cigarette, ~~or any cigarette or cigarette-like~~ shisha, smoking paraphernalia, or vapor product sales or distribution occurs. "Private Clubs" as

defined in Article 13-F, Section 1399-aa, of the New York State Public Health Law are exempted from this Section and all other provisions of this Article.

- B. Every dealer of tobacco products, herbal cigarettes, electronic cigarettes, shisha, smoking paraphernalia, or vapor products in Dutchess County shall comply with the licensing requirements of the New York State Department of Taxation and Finance for each location and/or event at which tobacco product, herbal cigarette, electronic cigarette, shisha, smoking paraphernalia, or vapor product sales or distribution occurs.
- C. Not less than ~~21~~ 14 days before starting operation as a dealer of tobacco products, herbal cigarettes, electronic cigarettes, ~~or any cigarette or cigarette-like shisha, smoking paraphernalia, or vapor~~ products, an application for a permit is to be submitted to the Permit Issuing Official. This application is to be completed in full on forms acceptable to the Permit Issuing Official. The application shall be accompanied by ~~payment of~~ the prevailing fee.
- D. Each Dutchess County Permit ~~issued will to operate shall~~ expire two (2) years from the date of issuance, except as ~~may~~ otherwise stipulated ~~be set forth~~ on the Permit. ~~The Permit shall be phased in over a 12-month period with a staggered system in order to facilitate efficient renewals.~~
- E. Each Dutchess County Permit to operate issued pursuant to this Article is nontransferable from one owner or operator to another, or from one establishment location to another.
- F. An application, completed in full, for renewal of a Dutchess County permit to operate shall be made at least thirty (30) days prior to expiration of the current permit on forms acceptable to the Permit Issuing Official. An application for a renewal permit to operate shall be accompanied by payment of the ~~prevailing~~ current fee.
- G. The Department may withhold, suspend, or revoke a Dutchess County Permit to operate if it finds that:
  - 1) the information submitted in the application is incorrect or incomplete; or
  - 2) the fee for application and/or the Dutchess County Permit to operate has not been paid as required; or
  - 3) the applying Dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product is not in compliance with all provisions of the New York State Tax Law Article 20 and the New York State Public Health Law Article 13-F; or ~~has not submitted the forms as required by Workers' Compensation Law Section 57 and 220[8]; or~~
  - 4) the applying Dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product has not signed and returned the "Statement of Understanding and Responsibility of the New York State ATUPA Law" with the permit application ~~is not operating in compliance~~



with all provisions of the New York State Tax Law, Articles 20 and 28-C, the New York State Public Health Law, Article 13-F, and this Article.

## Section 25.4 Standards and Requirements

- A) ~~Any Dealer~~ of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product shall comply with all provisions of The New York State Tax Law, Articles 20 and 28-C, The New York State Public Health Law, Article 13-F, and this Article.
- B) A valid Dutchess County Permit to operate a retail tobacco, and/or vapor product business must be posted in a conspicuous manner clearly visible to the public by the Dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product at each location where tobacco products, herbal cigarettes, electronic cigarettes, shisha, smoking paraphernalia, and/or vapor product sales or distribution occurs.
- C) In addition to the requirements of the ATUPA regulations, every Dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product in Dutchess County shall conspicuously place a sign produced and supplied by the Dutchess County Department of Behavioral & Community Health stating "Tobacco Use Harms You and Loved Ones Now. It may Kill You Later", or other sign approved by the Commissioner of Behavioral & Community Health.

## Section 25.5 Inspections, Violations, Enforcement, and Penalties

- A) The Permit Issuing Official may conduct regular inspections of an establishment to determine if a Dealer of tobacco products, herbal cigarettes, electronic cigarettes, shisha, smoking paraphernalia, or vapor products is in compliance with New York State Public Health Law, Article 13-F and this Article.
- B) ~~Any~~ A Dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like shisha, smoking paraphernalia, or vapor products who is found not to be in compliance with all of ~~shall comply with~~ the provisions of this Article and the New York State Public Health Law, in addition to any penalties under New York State Law, will also have their Dutchess County Permit suspended for a period of 48 hours after an administrative hearing has determined non-compliance. Dutchess County Sanitary Code, Article 4. Tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product may not be sold or offered for sale while a permit is in suspension.



- C) Selling, or offering for sale tobacco products, herbal cigarettes, electronic cigarettes, shisha, smoking paraphernalia, or vapor products without a valid and appropriately displayed permit issued by the Department constitutes a violation of this Article.
- D) Enforcement and penalties will follow procedures and schedules prescribed in New York State Public Health Law, Article 13-F and Dutchess County Sanitary Code, Article 4, except as indicated below:
  - a. In addition to the civil penalties prescribed in The New York State Public Health Law, a Dealer is subject to a 48-hour suspension of its Dutchess County permit to operate following an administrative hearing resulting in fewer than three (3) points.
  - b. Additionally, ~~a sign shall be placed at the entrance of the business~~ when it is determined after an administrative hearing that a sale to an underage individual occurred at an establishment, a sign issued by the Department shall be placed at the entrance of the business stating, "This business sold a tobacco product, herbal cigarette, electronic cigarette, ~~or other cigarette product~~ shisha, smoking paraphernalia, or vapor product to someone under 18 years of age an underage individual and may not sell these products from \_\_\_\_ to \_\_\_\_." (specified date and time)

## Section 25.6 School Reporting

A) ~~Each~~ Every school district year, each school year district within this County shall file with the Dutchess County Department of Behavioral & Community Health a written policy and procedure which will effect related to compliance with New York State Public Health Law, Article 13-E Public Health Law, and this Article. The policy and procedure must be filed no later than the last day of September of each calendar year and shall ~~include but not be limited to the following~~ contain, at a minimum:

1. Name, business address and phone number of the school district Superintendent.
2. Name, business address and phone number of the school district designated enforcement officer for each school.
3. Procedure and method for providing training and educational material ~~each school year to the~~ to school employees and students dealing with on the requirements of The New York State Public Health Law Article, 13-E, Public Health Law, State of New York, and Dutchess County Sanitary Code, Article 25 Sections, 25.1, 25.6, 25.7 ~~Dutchess County Sanitary Code.~~

4. ~~The school district's~~ administrative process for enforcement of Article 13-E of ~~The New York State Public Health Law and The Dutchess County Sanitary Code~~, Article 25, ~~to includ~~ing, but not ~~be~~ limited to the following:
  - a. written documentation for each incident (violation) on a form provided by and/or approved by the ~~Dutchess County Commissioner~~ **Department of Behavioral & Community Health** ~~or appointed designee~~. Said form is to be kept on file by the school until the offender is no longer enrolled in the school district.
  - b. procedures for and method of discipline and notification to the parent and/or legal guardian.
  - c. procedure for referral to the Dutchess County Department of Behavioral & Community Health for enforcement after the third incident (violation) has occurred during the school year.

B) Every **elementary**, middle, and high school shall file **a report** with the Dutchess County Department of Behavioral & Community Health on the violations of **The New York State Public Health Law**, Article 13-E, Section 1399-o, and this Article, which occurred on school grounds. The report shall be **made twice each school year, and the reporting periods shall be** September 1 to January 31, and February 1 to August 31 **of each calendar year**. **The report** shall include, but **is** not limited to, the following:

1. **the** number of persons who committed a violation;
2. **the** number of separate violations for each person reported in Item 1;
3. **the** sex and age of each violator;
4. **the** location of each violation;
5. **the** type of violation (smoking, **vaping**, or possession);
6. **the** type of product (**tobacco, herbal cigarette, electronic cigarette, shisha, smoking paraphernalia, or vapor product**); and
7. **where each person who committed a violation obtained or purchased the product, if known.**

## **Section 25.7 Possession and Use on School Property**

Smoking or vaping shall not be permitted, and no person shall use tobacco products, herbal cigarettes, electronic cigarettes, ~~or any cigarette or cigarette like~~ **shisha, smoking paraphernalia or vapor** products on school grounds ~~when school is in session, as well as during non-school hours at any time~~, whether when school is in session, or during non-school hours. No one under ~~18~~**21** years of age shall be permitted to possess tobacco products, herbal cigarettes,

electronic cigarettes, ~~any cigarette or cigarette like~~ shisha, smoking paraphernalia, or vapor products on school grounds ~~when school is in session~~.

## **Section 25.8 Severability**

If any clause, sentence, paragraph, subdivision, section, or part of this regulation or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order of judgment shall not effect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this regulation, or its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order of judgment shall be rendered.

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